

Exhibit 2

Strike 3's Objections to RPD Set One

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

STRIKE 3 HOLDINGS, LLC, a Delaware
corporation,

Plaintiff,

v.

JOHN DOE, subscriber assigned IP
address 73.225.38.130,

Defendant.

Case No. 2:17-cv-01731-TSZ

**PLAINTIFF'S OBJECTIONS AND
RESPONSES TO DEFENDANT'S FIRST
REQUESTS FOR PRODUCTION**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff Strike Three Holdings, LLC ("Plaintiff") hereby responds and objects to Defendant John Doe's, subscriber assigned IP address 73.225.38.130 ("Defendant"), First Requests for Production ("Requests").

PRELIMINARY STATEMENT

1. By responding to these Requests, Plaintiff neither waives nor intends to waive, and in fact expressly reserves all objections to these Requests, including: (1) all objections as to competency, relevancy, materiality and admissibility; (2) all objections as to vagueness, ambiguity and undue burden; (3) all rights to object on any ground to the use of any of these answers, documents that may be produced, or the subject matter thereof in any subsequent

PLAINTIFF'S OBJECTIONS AND RESPONSES TO
DEFENDANT'S FIRST RFPS – (2:17-CV-01731-TSZ) - 1

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1 proceeding or at trial of this case; and (4) all rights to object on any ground to any request for
2 further answers to these or any other discovery requests.

3 2. Plaintiff's investigation of the facts and law relating to this case is continuing and
4 has not been completed. Nor has discovery or preparation for trial been completed. Therefore,
5 this response is being provided without prejudice to Plaintiff's right to add, modify or otherwise
6 change or amend these responses and is subject to Plaintiff's right to produce evidence of any
7 subsequently-discovered fact or document.

8 3. Plaintiff's response to each Request is submitted without prejudice to, and without
9 in any way waiver of the General Objections listed below, whether or not each such General
10 Objection is expressly set forth in response to a particular Request. The assertion of any
11 objection or any other response below is neither intended as, nor shall in any way be deemed, a
12 waiver of Plaintiff's right to assert any other objections at a later date.

13 4. Plaintiff's responses to these Requests are subject to and without waiving, but on
14 the contrary reserving, Plaintiff's right to object to other discovery procedures relating to the
15 subject matter of the Requests. Further, information and documents that Plaintiff may produce
16 will be produced subject to Plaintiff's right to object to the introduction of such information or
17 document at any hearing or at the trial of this matter. The fact that Plaintiff may produce
18 responsive documents that can be located after a reasonable search should not be taken as an
19 admission that any such documents exist. The fact that Plaintiff has responded to part or all of
20 any Request is not intended to be, and shall not be construed to be, a waiver by Plaintiff of any
21 objection to any Request.

22 **GENERAL OBJECTIONS**

23 1. Plaintiff expressly incorporates the following General Objections and the above
24 Preliminary Statement into Plaintiff's responses to each Request. They are set forth here to
25 avoid the unnecessary repetition of restating them for each individual answer. Failure to
26

1 specifically incorporate a General Objection shall not be construed as a waiver of it with respect
2 to any specific Request.

3 2. Plaintiff objects to each Request to the extent that it calls for the production of
4 information or documents by Plaintiff which are not in Plaintiff's custody, possession or control
5 or attempts to impose a duty on Plaintiff to obtain information from third parties. Specifically,
6 Plaintiff objects to Defendant's definitions of "Strike 3 Holdings, LLC," "You," and "Your"
7 insofar as they purport to require Plaintiff to produce information in the hands of third parties.
8 Plaintiff answers these Requests only on its own behalf and not on behalf of any other party.

9 3. Plaintiff objects to Plaintiff's Definitions and Instructions to the extent they are
10 inconsistent with, or purport to impose any burden or obligation on Plaintiff in excess of, the
11 requirements of the Federal Rules of Civil Procedure, such as Rules 26, 33 and 34, and the Local
12 Rules of the Court and the Court's orders. Plaintiff will rely upon the Federal Rules of Civil
13 Procedure, the Local Civil Rules, the Court's orders and governing case law with respect to the
14 appropriate scope of its responses.

15 4. Plaintiff objects to each Request to the extent they purport to require disclosure of
16 Plaintiff's confidential and/or proprietary business information and trade secrets without
17 sufficient safeguards or protections to maintain the confidential and/or proprietary nature of the
18 information. Likewise, Plaintiff will not produce the confidential, proprietary or trade secret
19 information of third parties with whom Plaintiff transacts business. Similarly, Plaintiff will not
20 produce confidential personal information in violation of the privacy rights of its officers,
21 employees or any third parties.

22 5. Plaintiff objects to each Request to the extent that it seeks information that is
23 protected by the attorney-client privilege, the work product privilege or other privileges, or
24 which constitute material prepared in anticipation of litigation and/or which are exempt from
25 disclosure pursuant to Fed. R. Civ. P. 26, upon the grounds that privileged matter is exempt from
26 discovery and trial preparation material may only be discoverable upon satisfaction of the

1 prerequisites delineated in Fed. R. Civ. P. 26(b)(3) and (b)(4), which prerequisites have not been
2 satisfied.

3 6. Plaintiff objects to the use throughout the Requests of words and phrases that are
4 vague, ambiguous, not sufficiently definite, or susceptible to varying interpretations. Plaintiff's
5 responses to these Requests are based upon its understanding of such words and phrases.

6 7. The inadvertent or mistaken provision of information subject to the protections of
7 the attorney-client privilege, work product doctrine, or other privilege shall not constitute a
8 general, inadvertent, implicit, subject matter, separate, independent or other waiver of such
9 privilege or protection, and does not put in issue or constitute the affirmative use of the advice of
10 counsel or of any privileged communications. All such inadvertently provided information shall
11 be returned to Plaintiff's counsel, along with any copies made thereof.

12 **DOCUMENTS REQUESTED**

13 **REQUEST FOR PRODUCTION NO. 1:** A copy of the object code of the
14 Infringement Detection Software used on the Dates Of Alleged Infringements.

15 **RESPONSE:**

16 In addition to its general objections, which are incorporated herein by reference, Plaintiff
17 objects to this request as premature. This case is in its infancy. Defendant did not answer
18 Plaintiff's Complaint, nor has Defendant answered or otherwise responded to Plaintiff's
19 forthcoming First Amended Complaint. Instead, Defendant moved for a more definite statement
20 and asserted counterclaims. *See* Dkt. # 21 & 22. Plaintiff filed a motion to dismiss those
21 counterclaims and parties are currently awaiting the Court's decision on that motion. *See* Dkt. #
22 35. In the meantime, the Court granted Defendant's motion for a more definite statement and
23 ordered Plaintiff to file an amended complaint. *See* Dkt. # 36. In other words, the precise causes
24 of action, issues (legal and factual), admissions, denials, and affirmative defenses have not even
25 been framed or alleged. This case is still in the pleading stage, not the discovery phase.
26 Defendant's responsive pleading or motion to Plaintiff's First Amended Complaint is due July

1 17, 2018. *See* Dkt. # 36. Accordingly, the Court struck the previously scheduled status
2 conference and ordered the parties to conduct a Fed.R.Civ.P. 26(f) conference and file a Joint
3 Status Report on or before July 21. *Id.* Fed.R.Civ.P 26(d)(1) expressly states that “[a] party may
4 not seek discovery from any source before the parties have conferred as required by Rule 26(f).”

5 For that reason, the other reasons stated above, and the procedural and nascent posture of
6 this case, this request is premature. It is a waste of resources to substantively respond to
7 discovery at this point, especially since Defendant’s identity remains unknown and the
8 heightened potential for misuse of produced information since the precise causes of action, issues
9 (legal and factual), admissions, denials, and affirmative defenses have not even been framed or
10 alleged. Plaintiff further objects to this request for production as seeking confidential,
11 proprietary, and/or trade secret information, which Plaintiff will not produce unless and until
12 after entry of an appropriate and mutually agreeable protective order.

13 Subject to and without waiving its general and specific objections, Plaintiff will
14 supplement its response to this request for production at an appropriate, later date.

15
16 **REQUEST FOR PRODUCTION NO. 2:** A copy of the source code of the
17 Infringement Detection Software that was used on the Dates Of Alleged Infringements.

18 **RESPONSE:**

19 *See* response to Request for Production No. 1, which response is incorporated here by
20 reference.

21
22 **REQUEST FOR PRODUCTION NO. 3:** A copy of all third-party software licenses
23 that were used for Infringement Detection Software on the Dates Of Alleged Infringements.

24 **RESPONSE:**

25 *See* response to Request for Production No. 1, which response is incorporated here by
26 reference.

1 **REQUEST FOR PRODUCTION NO. 4:** A copy of all build files of the Infringement
2 Detection Software that was used on the Dates Of Alleged Infringements

3 **RESPONSE:**

4 *See* response to Request for Production No. 1, which response is incorporated here by
5 reference.

6
7 **REQUEST FOR PRODUCTION NO. 5:** A copy of all validation test files for the
8 Infringement Detection Software that was used on the Dates Of Alleged Infringements.

9 **RESPONSE:**

10 *See* response to Request for Production No. 1, which response is incorporated here by
11 reference.

12
13 **REQUEST FOR PRODUCTION NO. 6:** A copy of all documentation for
14 Infringement Detection on the Dates Of Alleged Infringements.

15 **RESPONSE:**

16 *See* response to Request for Production No. 1, which response is incorporated here by
17 reference.

18
19 **REQUEST FOR PRODUCTION NO. 7:** A copy of all expert reports regarding the
20 testing, validation, and/or inspection of the Infringement Detection Software on the Dates Of
21 Alleged Infringements.

22 **RESPONSE:**

23 *See* response to Request for Production No. 1, which response is incorporated here by
24 reference.

1 **REQUEST FOR PRODUCTION NO. 8:** A copy of all expert reports regarding the
2 testing, validation, and/or monitoring of Infringement Detection.

3 **RESPONSE:**

4 *See* response to Request for Production No. 1, which response is incorporated here by
5 reference.

6
7 **REQUEST FOR PRODUCTION NO. 9:** A copy of any and all Documents that
8 reference IP Addresses used to monitor the BitTorrent Swarm for Infringement Detection on the
9 Dates Of Alleged Infringements.

10 **RESPONSE:**

11 *See* response to Request for Production No. 1, which response is incorporated here by
12 reference.

13
14 **REQUEST FOR PRODUCTION NO. 10:** A copy of all PCAPs from the BitTorrent
15 Swarms that were collected for Infringement Detection on the Dates of the Alleged
16 Infringements.

17 **RESPONSE:**

18 *See* response to Request for Production No. 1, which response is incorporated here by
19 reference.

20
21 **REQUEST FOR PRODUCTION NO. 11:** A copy of all Torrent Files accessed by the
22 Infringement Detection Software corresponding to the Works.

23 **RESPONSE:**

24 *See* response to Request for Production No. 1, which response is incorporated here by
25 reference.

1 **REQUEST FOR PRODUCTION NO. 12:** A copy of all DMCA notices sent to IP
2 address 73.225.38.130.

3 **RESPONSE:**

4 *See* response to Request for Production No. 1, which response is incorporated here by
5 reference.

6
7 **REQUEST FOR PRODUCTION NO. 13:** A copy of all DMCA notices sent to any
8 internet service provider, in relation to IP address 73.225.38.130.

9 **RESPONSE:**

10 *See* response to Request for Production No. 1, which response is incorporated here by
11 reference.

12
13 **REQUEST FOR PRODUCTION NO. 14:** A copy of all copyright certificates related
14 to the Works.

15 **RESPONSE:**

16 *See* response to Request for Production No. 1, which response is incorporated here by
17 reference.

18
19 **REQUEST FOR PRODUCTION NO. 15:** A copy of all copyright depository copies
20 related to the Works.

21 **RESPONSE:**

22 *See* response to Request for Production No. 1, which response is incorporated here by
23 reference.

REQUEST FOR PRODUCTION NO. 16: All Documents, for the last three years, supporting your allegation in paragraph 3 of the Complaint that SH3 has “...more than 20 million unique visitors to its websites each month...”

RESPONSE:

In addition to its general objections, which are incorporated herein by reference, Plaintiff objects to this request as premature. This case is in its infancy. Defendant did not answer Plaintiff’s Complaint, nor has Defendant answered or otherwise responded to Plaintiff’s forthcoming First Amended Complaint. Instead, Defendant moved for a more definite statement and asserted counterclaims. *See* Dkt. # 21 & 22. Plaintiff filed a motion to dismiss those counterclaims and parties are currently awaiting the Court’s decision on that motion. *See* Dkt. # 35. In the meantime, the Court granted Defendant’s motion for a more definite statement and ordered Plaintiff to file an amended complaint. *See* Dkt. # 36. In other words, the precise causes of action, issues (legal and factual), admissions, denials, and affirmative defenses have not even been framed or alleged. This case is still in the pleading stage, not the discovery phase. Defendant’s responsive pleading or motion to Plaintiff’s First Amended Complaint is due July 17, 2018. *See* Dkt. # 36. Accordingly, the Court struck the previously scheduled status conference and ordered the parties to conduct a Fed.R.Civ.P. 26(f) conference and file a Joint Status Report on or before July 21. *Id.* Fed.R.Civ.P 26(d)(1) expressly states that “[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f).”

For that reason, the other reasons stated above, and the procedural and nascent posture of this case, this request is premature. It is a waste of resources to substantively respond to discovery at this point, especially since Defendant’s identity remains unknown and the heightened potential for misuse of produced information since the precise causes of action, issues (legal and factual), admissions, denials, and affirmative defenses have not even been framed or alleged. Plaintiff further objects to this request for production as seeking confidential, proprietary, and/or trade secret information, which Plaintiff will not produce unless and until

1 after entry of an appropriate and mutually agreeable protective order.

2 Plaintiff further objects to this request for production as citing an allegation in a
3 Complaint that is no longer the operative complaint in this action, and therefore seeks
4 information that is not relevant or reasonably calculated to lead to the discovery of admissible
5 evidence. *See* Dkt. # 36.

6 Subject to and without waiving its general and specific objections, Plaintiff will
7 supplement its response to this request for production at an appropriate, later date.

8
9 **REQUEST FOR PRODUCTION NO. 17:** All Documents supporting your allegations
10 in paragraph 4 of the Complaint that Defendant "...has been recorded infringing 80 movies over
11 an extended period of time".

12 **RESPONSE:**

13 *See* response to Request for Production No. 16, which response is incorporated here by
14 reference.

15
16 **REQUEST FOR PRODUCTION NO. 18:** All Documents supporting your allegations
17 in paragraph 9 of the Complaint that "...Plaintiff used IP address geolocation technology by
18 Maxmind Inc. ("Maxmind")".

19 **RESPONSE:**

20 *See* response to Request for Production No. 16, which response is incorporated here by
21 reference.

1 **REQUEST FOR PRODUCTION NO. 19:** All Documents supporting your allegations
2 in paragraph 13 of the Complaint that “Strike 3’s subscription based websites proudly boast a
3 paid subscriber base that is one of the highest of any adult-content sites in the world.”

4 **RESPONSE:**

5 See response to Request for Production No. 16, which response is incorporated here by
6 reference.

7
8 **REQUEST FOR PRODUCTION NO. 20:** All Documents supporting your allegations
9 in paragraph 13 of the Complaint that "Strike 3 also licenses its motion pictures to popular
10 broadcasters".

11 **RESPONSE:**

12 See response to Request for Production No. 16, which response is incorporated here by
13 reference.

14
15 **REQUEST FOR PRODUCTION NO. 21:** All Documents supporting your allegations
16 in paragraph 13 of the Complaint that “Strike 3’s motion pictures are the number one selling
17 adult DVDs in the United States”.

18 **RESPONSE:**

19 See response to Request for Production No. 16, which response is incorporated here by
20 reference.

1 **REQUEST FOR PRODUCTION NO. 22:** All Documents supporting your allegations
2 in paragraph 16 of the Complaint that “Often appearing among the most infringed popular
3 entertainment content on torrent websites, Strike 3’s motion pictures are among the most pirated
4 content in the world.”

5 **RESPONSE:**

6 *See* response to Request for Production No. 16, which response is incorporated here by
7 reference.

8
9 **REQUEST FOR PRODUCTION NO. 23:** All Documents supporting your allegations
10 that Defendant distributed S3H’s Works, as alleged in paragraph 23 of the Complaint.

11 **RESPONSE:**

12 *See* response to Request for Production No. 16, which response is incorporated here by
13 reference.

14
15 **REQUEST FOR PRODUCTION NO. 24:** All Documents supporting your allegations
16 in paragraph 26 of the Complaint that “A full copy of each digital media file was downloaded
17 from the BitTorrent file distribution network, and it was confirmed through independent
18 calculation that the file hash correlating to each file matched the file hash downloaded by
19 Defendant.”

20 **RESPONSE:**

21 *See* response to Request for Production No. 16, which response is incorporated here by
22 reference.

1 **REQUEST FOR PRODUCTION NO. 25:** All Documents supporting your allegations
2 in paragraph 27 of the Complaint that “Defendant downloaded, copied, and distributed a
3 complete copy of Plaintiff’s Works”.

4 **RESPONSE:**

5 See response to Request for Production No. 16, which response is incorporated here by
6 reference.

7
8 **REQUEST FOR PRODUCTION NO. 26:** All Documents supporting your allegations
9 in paragraph 29 of the Complaint that “The digital media files have been verified to contain a
10 digital copy of a motion picture that is identical (or alternatively, strikingly similar or
11 substantially similar) to Plaintiff’s corresponding original copyrighted Works”.

12 **RESPONSE:**

13 See response to Request for Production No. 16, which response is incorporated here by
14 reference.

15
16 **REQUEST FOR PRODUCTION NO. 27:** All Documents supporting your allegations
17 in paragraph 30 of the Complaint that “Absent this lawsuit, Plaintiff knows of no way to
18 effectively prevent Defendant from infringing Plaintiff’s motion pictures.”

19 **RESPONSE:**

20 See response to Request for Production No. 16, which response is incorporated here by
21 reference.

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1 DATED this 3rd day of July, 2018.

2 FOX ROTHSCHILD LLP

3
4 s/ Bryan J. Case

5 Bryan J. Case, WSBA #41781

6 Lincoln D. Bandlow, *admitted Pro Hac Vice*
(CSBA #170449)

7 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2018, I served the foregoing document on the following individuals via the method described below:

J. Curtis Edmondson, WSBA #43795
399 NE John Olsen Avenue
Hillsboro, Oregon 97124
Telephone: (503) 336-3749
Email: jcedmondson@edmolaw.com
kiren@edmolaw.com

- ☐ Via CM/ECF
- ☐ Via U.S. Mail
- ☐ Via Messenger Delivery
- ☒ Via Email (per agreement)
- ☐ Via Facsimile

DATED this 3rd day of July, 2018.

/s/ Christine F. Zea

Christine F. Zea
Floating Legal Administrative Assistant